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The situation in Central America: progress in fashioning a region of peace, freedom, democracy and development

Letter dated 10 November 2011 from the Secretary-General addressed to the President of the General Assembly

I have the honour to refer to General Assembly agenda item 42 entitled "The situation in Central America: progress in fashioning a region of peace, freedom, democracy and development". In its resolution 65/181 on the International Commission against Impunity in Guatemala, the Assembly requested that I periodically keep it apprised of the work of the Commission and the implementation of the resolution. In keeping with that provision, I wish to inform the Assembly of developments concerning the Commission. On 5 October 2011, the Commission presented its fourth annual report in Guatemala City. Much of the information contained in the present letter is derived from the content of that report.[1]

On 13 January 2011, following an exchange of letters between Guatemalan authorities and the Secretariat, the mandate of the Commission, which was set to expire on 3 September 2011, was extended for an additional two years until 3 September 2013. During this period, the Commission aims to consolidate its activities to fight impunity and dismantle criminal structures that have obstructed the functioning of justice and security institutions.

The Commission is currently staffed by 207 national and international staff representing 23 nationalities, including Guatemala. Not counting the staff in security functions, 61 per cent of the staff of the Commission are men and 39 per cent are women. Since August 2010, the Commission has been headed by Francisco Javier Dall'Anese Ruiz and is currently composed of five units: the Office of the Commissioner, the Investigation and Litigation Unit, the Information and Analysis Unit, the Administration Unit and the Safety and Security Unit.

From September 2010 to August 2011, the Commission received 201 complaints and carried out 62 active investigations. In 20 of these investigations, the Commission acted as the "complementary prosecutor", a figure under Guatemalan law that permits the Commission to participate in judicial proceedings as an

[1] The report may be found, in Spanish, at http://www.cicig.org/uploads/documents/2011/COM-052-20111005-DOC01.pdf.

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independent prosecutor alongside the Office of the Public Prosecutor. Over the past year, verdicts were issued in six emblematic cases in which the Commission was involved. Convictions were achieved in all but one of those cases (former President Alfonso Portillo Cabrera was acquitted of embezzlement charges, a verdict that is being appealed by both the Office of the Public Prosecutor and the Commission).

The Commission has established a productive working relationship with the Office of the Public Prosecutor of Guatemala, its principal national counterpart. The appointment of Claudia Paz y Paz Bailey as Attorney General and head of the Office of the Public Prosecutor in December 2010 contributed to reinforcing a collaborative approach that has started to bear fruit. Since the appointment of the new Attorney General, the Office of the Public Prosecutor has shown practical results in the investigation and criminal prosecution of serious crimes, in relation to cases of drug trafficking, electoral violence and organized crime, as well as major human rights violations committed during the Guatemalan internal armed conflict. In addition, the Commission has been working well with the Ministry of the Interior of Guatemala, allowing for institutional stability during its fourth year of operations.

The relationship between the Commission and the judiciary, however, has experienced some difficulties. The Commission alleges irregular conduct on the part of certain judges, including decisions that had the effect of promoting impunity. As expressed by the Commission, such irregular conduct was not addressed adequately by the judiciary. The Commission has noted that the judiciary faces difficulties when reviewing cases involving the masterminds of serious crimes. More recently, the Commission has engaged in a dialogue with the Supreme Court of Justice with a view to assisting in the improvement of judicial performance. By and large, the media and public opinion has applauded the actions of the Commission in pointing out the deficiencies in the judiciary.

In accordance with its strategic plan for 2011-2013, the Commission is placing a priority on its existing investigations and prosecutions, as well as on institutional strengthening activities with a view to enhancing national capacities to fight impunity. Within the realm of institutional strengthening activities, the Commission will focus on:

(a) Supporting specialized prosecutors;

(b) Creating an international relations office in the Office of the Public Prosecutor;

(c) Strengthening the national Office for the Protection of Victims and Witnesses;

(d) Strengthening the Analysis Unit of the Office of the Public Prosecutor;

(e) Creating a special police unit dealing with criminal investigations;

(f) Strengthening the Special Methods of Investigation Unit, comprised of staff from the national civilian police and the Office of the Public Prosecutor;

(g) Creating a police information platform.

During 2011, the Commission and the Office of the Public Prosecutor established strategies to strengthen investigations and criminal prosecutions. Together with the United Nations Children's Fund (UNICEF), the Commission supported the creation of a section to investigate trafficking in persons, femicide and

violence against women. Together with UNICEF, in December 2010 the Commission published a report entitled "Actors involved in the illegal adoption process in Guatemala since the entry into force of the Adoption Law".[2] The investigation of the Commission into illegal adoptions has led to recent prosecutorial successes.

The Commission has continued to promote institutional and legal reforms intended to strengthen Guatemalan institutions in the fight against crime and impunity. The Guatemalan legislature, however, has made slow progress over the past year in the approval of the legislative proposals formulated by the Commission, although some initiatives supported by the Commission, such as the Law on Asset Seizures and the Law Regulating Private Security Services, were approved by Congress. The Commission considers paramount the approval of a package of legal reforms to the Penal Code to fight corruption, as well as reforms to the Organic Law on the Office of the Public Prosecutor. The Commission is also closely following the proposals for constitutional reform in the areas of justice and security and is providing recommendations with a view to guaranteeing judicial independence.

On 6 November 2011, Guatemalans elected Otto Pérez Molina as their next President in a run-off election. The President-elect, who will take office in January 2012, has expressed his commitment to working closely with the Commission and to supporting the process of reform in rule of law institutions, including respecting the mandated term of the Attorney General, who is widely perceived to have made improvements.

As the Commission is a joint initiative of the United Nations and the State of Guatemala, collaboration with Guatemalan authorities in the implementation of the Commission's mandate is an indispensable element in achieving success in the fight against impunity. It is important for Guatemala to strengthen its justice and security sectors, including with reinforced budgetary support.

One of the major achievements of the Commission has been to promote the notion that professional investigations and prosecutions can be effective and deliver justice. Over the four years of the Commission's existence, there has been a groundswell of public support in Guatemala for improvements in the justice and security sectors. At the same time, the successes of the Commission have also engendered a degree of opposition and criticism. Recent reforms and improvements in the prosecution of major crimes in Guatemala suggest that the Commission is making a positive contribution to the strengthening of national institutions.

The United Nations is also supporting efforts to guarantee human rights and strengthen the security and justice systems in Guatemala through a $10 million contribution from the United Nations Peacebuilding Fund. National Guatemalan institutions, United Nations agencies and programmes, the Commission and civil society organizations are all collaborating in the design of projects financed by these funds.

Just as the commitment of national authorities and institutional counterparts is essential to meeting the Commission's objectives, so too is the ability of the Commission to operate effectively and with adequate resources. The Secretariat is grateful for the financial, in kind and political support that Member States have

[2] http://www.cicig.org/uploads/documents/adoptionsreport_CICIG2010.pdf.

provided to the Commission. During its current extended mandate, however, the Commission is facing budgetary difficulties that will force it to reduce its size and operations at a time when its effective support to Guatemalan institutions is most needed.

The Commission has an annual budget of $20 million. Given recent reductions in the contributions from donors, the Commission has been obliged to prepare a revised $15.4 million budget, which it views as the minimum amount to enable it to carry out its core work. The budget reduction necessitates a cut in both personnel and ongoing activities. To reach the $15.4 million funding level, between now and September 2013 the Commission will require additional contributions in the amount of $6.5 million.

In keeping with operative paragraph 3 of resolution 65/181, I urge Member States to continue their support for the Commission, thereby allowing it to effectively achieve its objectives of transferring capacities to national institutions and strengthening the ability of Guatemala to fight impunity and criminal structures.

The Secretariat backs the Commission's important efforts to strengthen the rule of law in Guatemala. At United Nations Headquarters, as well as in the field, collaboration between the Commission and the United Nations is strong. I hope that we will be able to renew the partnership between the Commission, the United Nations, the State of Guatemala and other Member States to ensure the effective consolidation of this initiative.

(*Signed*) **BAN** Ki-moon